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No. 78/213

December 8, 1978

TO COUNTY ASSESSORS:

ATTORNEY GENERAL'S OPINION ON THE ASSESSOR'S RIGHT  
OF TRESPASS ON PRIVATE PROPERTY FOR ASSESSMENT PURPOSES

For your information, attached is Attorney General's Opinion No. CV 78/67, dated November 28, 1978, concerning the assessor's right of trespass on private property. The opinion was given in response to a request by Mendocino County Assessor Elect, Duane K. Wells. The issues are straightforward, and the conclusions do not conflict with any established Board policy.

Sincerely,

Verne Walton, Chief  
Assessment Standards Division

VW:ce  
Enclosure

EVELLE J. YOUNGER  
Attorney General

NOVEMBER 28, 1978

1.

against the will of the owner in order to assess property.

4. A county assessor would commit criminal trespass if he entered private property against the will of the owner and refused to leave at the request of the owner.

#### ANALYSIS

The basic functions of county assessors are to appraise and to assess all taxable property in their respective counties. (Rev. & Tax. Code, §§ 405, 405.5; 1/ Domenghini v. County of San Luis Obispo (1974) 40 Cal.App.3d 689, 694-695.) The questions presented for analysis concern the possible ways in which a county assessor may perform his statutory duties when an owner of property refuses to allow the assessor to enter upon the property.

The first question deals with the statutory procedures by which a county assessor may obtain information regarding property. We conclude that an assessor has several rights of discovery for the appraisal and assessment of property when an owner refuses entry upon the property.

Section 441 states in part:

"Every person owning taxable personal property having an aggregate cost of thirty thousand dollars (\$30,000) or more shall file a signed property statement with the assessor. Every person owning personal property which does not require the filing of a property statement or real property shall upon request of the assessor file a signed property statement. . . ." (Emphasis added.)

A formal property statement must be declared to be true under penalty of perjury (§ 441, subd. (a)) and must describe all taxable property owned (§§ 442, 445). If the statement is filed late without reasonable cause, a penalty of 10 percent of the assessed value of the property is added to the assessment. (§ 463.)

In addition to the statutorily defined property statement, an assessor may request any other information or records regarding property. (§§ 441, subd. (d), 442, 470.) If the person refuses to respond, the assessor may obtain a court order requiring the person to answer concerning his

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1. All unidentified section references hereinafter refer to the Revenue and Taxation Code.

2.

property. (§ 468.) If the person responds but the assessor is dissatisfied with the response, he may subpoena and examine the person under oath. (§ 454.) A person who fails to respond to an assessor's request for information or who willfully responds in a false manner is guilty of a misdemeanor. (§§ 461, 462.)

As to the assessment of property when a person fails to furnish requested information, "the assessor, based upon information in his possession, shall estimate the value of the property and, based upon this estimate, promptly assess the property." (§ 501.) If an underassessment results due to a willful failure to disclose information or due to a false disclosure, a penalty of 25 percent of the additional assessed value must be added to the assessment. (§§ 502-504.)

The statutory scheme for the assessment of property thus provides criminal sanctions and monetary penalties for an owner of property who prevents an assessor from performing his duties. A county assessor may estimate the value of the property when an owner refuses to supply requested information. 2/

The conclusion to the first question, therefore, is that an assessor may exercise several statutory rights of discovery in order to ascertain the value of property when an owner refuses to allow entry upon the property.

The second question concerns whether a county assessor may obtain an administrative inspection warrant in order to appraise and to assess property. We conclude that he may not.

The issuance of an administrative inspection warrant is governed by the provisions of Code of Civil Procedure sections 1822.50-1822.57. Normally, such warrants may be obtained by a building, fire, safety, plumbing, electrical, health, or zoning inspector to ascertain whether particular premises violate specific legislative or administrative standards. (See Code Civ. Proc., §§ 1822.50, 1822.52, 1822.56.) The procedure is essentially adversary in nature and may result in criminal sanctions if the condition of the premises does not comply with state or local laws or regulations. (See Currier v. City of Pasadena (1975) 48 Cal.App.3d 810, 814; Tellis v. Municipal Court (1970) 5 Cal.App.3d 455, 458.)

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2. Should the owner seek to reduce the assessment in a subsequent suit for refund, the burden would be upon him to establish the true value of the property. (Domenghini v. County of San Luis Obispo, supra, 40 Cal.App.3d 689, 697.)

Warrants are necessary in such circumstances because "except in certain carefully defined classes of cases, a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant." (Camara v. Municipal Court (1967) 387 U.S. 523, 528-529; accord, Marshall v. Barlow's, Inc. (May 23, 1978) 46 U.S.L. Week 4483, 4484.)

As distinguished from public officials concerned with violations of law, a county assessor performs functions that are "inquisitorial not adversary." (Domenghini v. County of San Luis Obispo, supra, 40 Cal.App.3d 689, 695.) He does not inspect property to see if its condition meets specific standards. (See Skidmore v. County of Amador (1936) 7 Cal.2d 37, 39; Weyse v. Crawford (1890) 85 Cal. 196, 200.) The appraisal and assessment statutes under which he performs his duties do not relate to the subject matter of an administrative inspection warrant (Code Civ. Proc., § 1822.50), and the grounds for the issuance of such a warrant (Code Civ. Proc., § 1822.52) are not present. In light of the legislative scheme contained in the Revenue and Taxation Code for the discovery of information by county assessors, issuance of administrative inspection warrants to them is not required for the performance of their statutory responsibilities.

The conclusion to the second question, therefore, is that a county assessor may not obtain an administrative inspection warrant in order to assess property.

The third question concerns whether a county assessor may enter private property without a warrant and against the will of the owner. We conclude that he may not.

As previously explained, the Legislature has provided numerous ways in which a county assessor may obtain needed information regarding property when an owner refuses to allow entry to his property. Criminal prosecution and monetary penalties are available to insure that an assessor may perform his duties.

The statutory scheme makes no provision for an assessor to enter private property against the will of the owner. Possible physical confrontations between an assessor and an owner are thus avoided, yet the assessor is able to perform his assessment responsibilities. In contradistinction to the situations justifying the use of administrative inspection warrants, the entry upon private property by a county assessor against the will of the owner is not required to assess the property.

The conclusion to the third question, therefore,

is that a county assessor may not enter private property against the will of the owner in order to assess the property.

The fourth question concerns whether a county assessor commits criminal trespass when he enters private property against the will of the owner. We conclude that in general, criminal trespass would be committed if the assessor were to refuse the request of the owner to leave the property.

Penal Code section 602 defines criminal trespass under various conditions and circumstances. Among its numerous subdivisions, the most likely to be applicable for county assessors assessing property is subdivision (n), which by recent amendment defines criminal trespass as follows:

"Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by . . . the owner, his agent, or the person in lawful possession thereof. . . ." 3/

Under subdivision (n), a county assessor would be subject to prosecution if he refused to leave the property after being requested to do so by the owner.

In general, then, the conclusion to the fourth question is that a county assessor would commit criminal trespass by his entry upon private property against the will of the owner and his refusal to leave the property at the request of the owner. 4/

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3. The legislation amending subdivision (n) was passed on August 31, 1978, effective January 1, 1979; prior law required both the owner and a peace officer to request that the person leave the property.

4. In certain limited circumstances involving the driving of a vehicle upon a private road, a county assessor may be in violation of Penal Code section 602, subdivision (m).